

REMARKS

Introduction

Claims 1-17, 19-23, 25-74, and 77-98 are pending in the present application. In view of the following remarks, it is respectfully submitted that claims 1-17, 19-23, 25-74, and 77-98 are allowable. Reconsideration of the present application is requested.

Rejection of Claims 1-17, 19-23, 25-74, and 77-98 under 35 U.S.C. § 103(a)

Claims 1-17, 19-23, 25-74, and 77-98 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,981,224 to Gardner et al. ("Gardner") in view of U.S. Patent No. 6,331,861 to Gever et al. ("Gever"). Applicants respectfully submit that this rejection should be withdrawn in view of the following remarks.

Given that the issue dates of Gever and Gardner are both after the filing date of the present application, Applicants assume that the Examiner is relying on these references as prior art under 35 U.S.C. § 102(e). However, the filing date of the present application is October 19, 2000, which is before the November 28, 2000, filing date of the application of which Gardner is a divisional, but after the May 5, 2000, filing date of the provisional application that Gardner claims the benefit of. Thus, according to M.P.E.P § 2136.03, Gardner may only be used as a prior art reference under 35 U.S.C. § 102(e) "if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph." The outstanding office action contains no indication that the sections of Gardner relied upon for the rejections are supported by the provisional application.

Based on a review of the provisional application (60/201,970) via the PAIR system, Applicants note that the specification of Gardner is substantially longer than that of the provisional application (28 pages versus 17 pages) and that Gardner contains more drawing sheets than the provisional application (11 sheets versus 7 sheets). Furthermore, the text of at least some sections of Gardner that the Examiner relies upon to reject the independent claims of the present application (e.g., col. 3:35-67, 10:31-57 and 13:7-65)

does not appear in the provisional application. Also, at least some of the sections of Gardner that the Examiner relies upon to reject the independent claims of the present application (e.g., col. 10:31-57 and 13:7-65) reference figures (e.g., 8 and 11) which do not appear in the provisional application.

Applicants respectfully request the withdrawal of this rejection because the portions of Gardner relied upon by the Examiner have not been shown to be prior art to the present application.

Conclusion

Applicants respectfully submit that all pending claims of the present application are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

The Office is authorized to charge any fees associated with this Amendment to Kenyon & Kenyon Deposit Account No. 11-0600.

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Respectfully submitted,

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